In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.M.No.18101 of 2006 and
C.W.P.No. 4702 of 2006 (O&M)
Decided on Nov 06,2006.

Indermal Lachhman Dass Traders Private Limited --Petitioner

vs.

State Bank of India --Respondent.

Coram: Hon'ble Mr.Justice Jasbir Singh
Hon'ble Mr.Justice Pritam Pal

Present: Mr. A.K.Chopra,Sr.Advocate, with
Mr.Rajvir Singh,Advocate,for the petitioner

None for the respondent.

Jasbir Singh J:(Oral)

C.M.No.18101 of 2006

By moving this C.M, petitioner intends to withdraw the replication to the written statement.

Permitted to withdraw this application..

C.W.P.No.4702 of 2006

This writ petition has been filed with a prayer to issue a writ of Certiorari to quash notice under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated July 27,2005 (Annexure P2) and also to issue a writ of mandamus, directing the respondent bank not to take actual physical

possession of the property mortgaged with it.

When notice of motion was issued, following contention of counsel for the petitioner was noticed by this Court on March 24,2006:-

" One of the contentions of Mr. Chopra, learned Senior Counsel for the petitioner, is that apart from the fact that the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002, are not applicable to the facts of the present case, the respondents are threatening to take physical possession of the mortgaged property without disposing of the objections filed by the petitioner pursuant to notice under Section 13 (2) of the said Act. It is also submitted that an amount of Rs. 48.99 lacs has already been deposited by the petitioner in terms of the commitment made by the petitioner in terms of letter, dated 8th June, 2005".

After notice, in reply, it has been said that objections, as alleged by the petitioner, were received by the bank in response to the notice under challenge. By filing replication, this fact has been refuted by the petitioner. It is not necessary for us to go into this aspect as subsequent to the issuance of notice, as per reply filed, symbolic possession of the mortgaged property was taken up by the Bank. If that is so, remedy of appeal is available to the petitioner.

In view of alternative remedy available, this writ petition is disposed of with a direction to the petitioner to file an appeal. If appeal is filed within three weeks from today, bar of limitation shall not be counted against the petitioner, as he was deligently pursuing the writ petition in this Court. It is made clear that dispute as to whether

objections were filed or not, is still open and petitioner may agitate the same alongwith other objections if any, which he has taken in this writ petition including maintainability of the issue of notice under Section 13 (2) of the Act, before the Debts Recovery Tribunal, Chandigah.

A copy of this order be given dasti on usual payment.

(Jasbir Singh)
Judge

Nov 06,2006,
RR

(Pritam Pal)
Judge